IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1812 of 2001

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 15.10.2001 in WP No : 3300 OF 2001 on the file of the High Court.)

Between:

1. V.Jayachandra Reddy S/o.Narasimha Reddy.

2. V.Devender Reddy, S/o.Narasimha Reddy.

3. V.Sunanda W/o.Late Narasimha Reddy

4. Vidyullatha D/o.Late Narasimha Reddy.

All R/o.3-5-170/A/43, Narayanaguda, Hyderabad.

....APPELLANTS

AND

1. The Joint Collector, Ranga Reddy

District at Hyderabad.

2. The Revenue Divisional Officer,

R.R. East at Hyderabad.

3. The Mandal Revenue Officer, Medchal

Mandal, R.R. District.

4. B.Ashok Rao, S/o.B.Narsing Rao,

aged 43 years, R/o.3-100, Old Alwal,

Secunderabad.

..RESPONDENTS

Counsel for the Appellants: MR.K.RAGHUVEER REDDY

Counsel for the Respondent Nos1,2 and 3: GP FOR REVENUE

Counsel for the Respondent No.4: MR.E.MANOHAR, SENIOR ADVOCATE AND MR.YRAMA RAO.

The Court made the following:

JUDGMENT: (Per BRSR.J)

The appellants in this writ appeal are the writ petitioners. They filed the appeal aggrieved by the orders dated 15.10.2001, made in W.P.No.330 of 2001. The writ petition was filed challenging the Order, dated 30.06.1992, passed by the third respondent-Mandal Revenue Officer, Medchal Mandal, Ranga Reddy District, under Section 5-A of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short "the Act"), as confirmed by the Order, dated 25-09-1993, of the second respondent-Revenue Divisional Officer and upheld by the Order, dated 04.12.2000, by the first respondent-Joint Collector, revisional authority.

The fourth respondent herein filed an application purporting it to be under Section 5-A of the Act before the third respondent-Mandal Revenue Officer seeking regularization of the transfer of land admeasuring 12 acres, in survey Nos.128, 130 and 131 of Kandlakoya village of Medchal Mandal, Ranga Reddy District. The third respondent *vide* Order, dated 30-06-1992, directed a certificate to be issued to the fourth respondent declaring that the alienation is valid from the date of issue of certificate.

The whole of the claim of the fourth respondent is based upon the compromise decree passed by this Court in C.C.C.A.No.190 of 1972. The fourth respondent, initially, filed O.S.No.381 of 1969 on the file of the

V Additional Judge, City Civil Court, Hyderabad against the appellants seeking specific performance of an **agreement of sale**. The suit was dismissed and the fourth respondent filed C.C.C.A.No.190 of 1972 challenging the said decree, which ultimately ended in compromise between the parties *vide* Order, dated 20-07-1976, in C.M.P.No.3738 of 1976. That under the said terms of compromise, the appellants herein were to execute and register a separate sale deed conveying the right, title and interest in the properties in question. The fourth respondent filed E.P.No.58 of 1984 for execution of the compromise decree on the ground that the appellants herein have not cooperated and discharged their obligation under the compromise decree. The matter again ended in compromise. That an order was passed on 21.02.1985, whereunder the fourth respondent was allotted the land in question, in respect of which he submitted an application under Section 5-A of the Act.

The third respondent, based on the said compromise decree, passed the impugned Order, dated 30.06.1992, in which it is, *inter alia,* observed that the fourth respondent herein purchased the lands in question from "Narasimha Reddy, as per registered document". The said Narasimha Reddy is none other than the father of the appellants. The case of the fourth respondent itself is based on an unregistered agreement of sale, based upon which he filed suit that ended in the compromise decree. It is not known as to on what basis the Mandal Revenue Officer observed in the order that the fourth respondent purchased the property in question as per the registered document. The statement made in the order is absolutely false and baseless. Such a statement obviously appears to have been made in his anxiety to favour the fourth respondent. Be it noted that the Mandal Revenue Officer granted the certificate as prayed for by the fourth respondent without issuing any notice whatsoever to the appellants.

The appellate authority without assigning any reason whatsoever dismissed the appeal preferred by the appellants. The appellate authority also relied upon the compromise decree obtained by the fourth respondent herein against the appellants. The revisional authority relying upon Rule 27(4) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 found that the

Mandal Revenue Officer has rightly referred the decree to the Sub-Registrar to determine the stamp duty and registration fee, and after such determination, issued the certificate in Form No.13-C, which in the opinion of the revisional authority does not suffer from any infirmities.

In this writ appeal, Sri E.Manohar, learned senior counsel submitted that the application filed by the fourth respondent herein for regularization of alienation on the basis of the compromise decree in a suit for specific performance of an agreement of sale is not maintainable in law and the issue is not *res integra* but squarely covered by an authoritative pronouncement rendered by a Division Bench of this Court reported in ***KONKANA RAVINDER GOUD AND OTHERS v. BHAVANARISHI CO-OPERATIVE HOUSE BUILDING SOCIETY, HYDERABAD AND OTHERS***, wherein it was held that no certificate under Section 5-A of the Act can be granted based on the agreement of sale. No regularization of alienation even based on a decree obtained in a suit for specific performance can be ordered under Section 5-A of the Act.

Learned counsel for the respondents made an attempt to support the impugned orders.

In Konkana Ravinder Goud's case (supra), it is observed at para 51, as follows:

> *"A bare reading of the aforementioned provision makes it clear that Section 5-A has been enacted with a view to regularize certain alienations or other transfers of land, which otherwise are not complete by registered instruments. The pre-requisities being that where a person is an occupant by virtue of an alienation or transfer made, or effected otherwise by registered document, he may apply within the prescribed period to the Mandal Revenue Officer for a certificate declaring such alienation or transfer as valid. On receipt of the application, the Mandal Revenue Officer is required to make such enquiry as may be prescribed requiring the alienee or the transferee to deposit in the Office of the Mandal Revenue Officer an amount equal to the registration fees and the stamp duty that would have been payable had the alienation or transfer been effected by a registered document in accordance with the provisions of the Registration Act, 1908. Such fee and stamp duty is required to be fixed by the Registering Officer on a reference made to him by the Mandal*

Revenue Officer on the basis of the value of the property arrived at in such manner as may be prescribed. There is an embargo placed on the Mandal Revenue Officer that he shall not require the alienee or the transferee to deposit the amount unless he is satisfied that the alienation or transfer is not in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation) Act, 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977."

The Court while dealing with the expression "transfer" employed in Section 5-A of the Act observed at para 56, as under :

"The word "transfer" thus being a term of well-known legal significance having well ascertained incidents, the Legislature did not think it necessary to define the term "transfer" separately in the Act. Supreme Court in Sonia Bhatia v. State of U.P., AIR 1981 SC 1274, also interpreted the term "transfer" in general sense as defined in Transfer of Property Act, when provisions of U.P. Imposition of Ceiling on Land Holdings Act were considered where the expression "transfer" was not defined under the said Act. The Apex Court held that whenever the Legislature uses certain terms or expressions of well-known legal significance or connotation the Courts must interpret them as used or understood in the popular sense. The Legislature while enacting the U.P. Imposition of Ceiling on Land Holdings Act was alive to the provisions of the Transfer of Property Act dealing with the transfer of immovable property. The terms 'transfer', 'sale', 'mortgage' and 'lease' have not been defined in the said Act. Therefore, these terms must have been used only in the sense in which they have been used in the Transfer of Property Act. If the Legislature intended to use those terms in a different sense and with a different connotation, it would have defined those terms in the Act. But that has not been done."

The Court further held that, "assuming a suit was also filed and decree of specific performance was obtained, such a decree for specific performance of contract will not have the effect of conveying right, title and interest in favour of the society till a deed of sale is duly executed and registered." Neither a

contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree holder.

It is further observed at paragraph 64 as follows:

> *"Even in those cases where pursuant to agreement of sale the transferee takes possession of the land in part performance of the agreement of sale as is the case of petitioner society, such an act also does not confer any title in the land in favour of the transferee."*

The Court held at para 67:

> *"... the purport and meaning of the word "transfer" as contained in Section 5-A of the Act in the light of the objects and reasons in introducing the said provision, namely, to regularize an unregistered sale transaction, which would not mean to regularize incomplete transfers. There is no machinery or mechanism provided in the Act that even a person who has entered into an agreement of sale and in case sale is not completed but he has been put into possession of the property even on payment of entire sale consideration that can approach the Mandal Revenue Officer for grant of a certificate under Section 5-A of the Act. The Mandal Revenue Officer in such a case cannot proceed to hold an enquiry as to whether agreement of sale has been complied with or not. On the failure on the part of the vendor to complete the sale transaction, a person in whose favour there is an agreement of sale can seek specific performance of the agreement of sale so as to convey right, title or interest of the vendors. The machinery provided under the Act ;is not the appropriate machinery for perfecting title merely on the basis of agreement to sell. We are, therefore, of the view that the finding of the learned Judge that there is a valid transfer of immoveable property under agreements of sale cannot be sustained. Thus, we have no hesitation in holding that the agreement of sale relied upon by the society is not covered by the term transfer and cannot be treated as an "alienation" or "transfer" within the scope and meaning of Section 5-A of the Act and we answr the first question accordingly."*

The view taken by the learned Judge that while exercising the power under Section 5-A of the Act, any transfer made in pursuance of any document

or “if any understanding reached between the parties” can be implemented in the proceedings under Section 5-A of the Act, which is beneficial to the interest of both the purchaser as well as the vender, is totally untenable and unsustainable. It is in conflict with the ratio of the judgment rendered by a Division Bench of this Court in Konkana Ravinder Goud‘s case, referred to hereinabove.

The application of the fourth respondent is not for updating or amending the entries in the record of rights based on the decree granted by a competent Court of civil jurisdiction, but it is an application filed under Section 5-A of the Act seeking regularization of transfer made and effected under an agreement of sale, which ultimately ended in a compromise decree for specific performance of agreement of sale. That compromise decree itself remained unexecuted since it did not result in execution of any sale deed. The whole claim of transfer of the lands in question is based on an agreement of a sale, which document cannot be considered to be a document of “transfer” or “alienation”.

The authorities below in their anxiety to support the untenable and unsustainable claim of the fourth respondent have gone to the extent of distorting the facts. The conduct of the Mandal Revenue Officer and the appellate authority in the manner in which they have disposed of the matter is reprehensive. That such a partisan attitude is not expected from the quasi-judicial authorities who are bound to record the facts correctly and express their views on the questions of law and facts that have been raised before them. We have already noted that the Mandal Revenue Officer made a false statement in the impugned order. The revisional authority also misdirected itself to the questions that have arisen for consideration and committed serious jurisdictional errors. The impugned orders passed by the authorities below suffer from errors apparent on the face of the record. It is eminently a fit case for our interference in exercise of our certiorari jurisdiction.

In the result, all the orders passed by the authorities below are quashed. The judgment of the learned Single Judge under appeal is set aside. The writ appeal is accordingly allowed with costs quantified at Rs.10,000/- (rupees ten thousand only). Let the writ of C*ertiorari* be issued.

_____

B. SUDERSHAN REDDY, J.

Date:07-02-2005

_____

C.V. RAMULU, J.

GS/GJ

1. The Joint Collector, Ranga Reddy

District at Hyderabad.

2. The Revenue Divisional Officer,

Ranga Reddy East at Hyderabad.

3. The Mandal Revenue Officer,
Medchal Mandal, Ranga Reddy District.

4. Two C.Cs to the G.P. for Revenue, High Court of

Andhra Pradesh, Hyderabad (O.U.T.)

5. Two C.D. Copies.